90-771

No. _____

SUPREME COURT, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

OLIVER H. CLAYPOOL, JR., AND OLIVER H. CLAYPOOL, JR. as next friend of OLIVER J. CLAYPOOL, CHRISTINE O. CLAYPOOL, AND ROBERT L. CLAYPOOL, Petitioners,

v.

FLORA B. BOYD, Individually and as Warden, Stevenson Correctional Institution; WILLIAM D. LEEKE; PARKER EVATT, as Commissioner, South Carolina Department of Corrections, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Oliver H. Claypool, Jr.
2900 S. Memorial #304
New Castle, IN 47362
(317) 529-8827

QUESTIONS PRESENTED

1. Whether the Thirteenth Amendment's provision that "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction." was in 1986 "clearly established law" so as to protect a person not convicted of any crime but imprisoned for civil contempt from being kept in a condition of involuntary servitude.

2. Whether declaratory relief concerning conditions of imprisonment is available to a person released from imprisonment when there is a genuine threat of reimprisonment under the same allegedly unconstitutional conditions.

LIST OF PARTIES

All parties who participated in and/or had an interest in the proceeding in the court whose judgement is sought to be reviewed appear in the caption hereto.

However, since that proceeding was a result of the immediate appealability of the denial of respondents' claim of qualified immunity, additional defendants in the district court remain parties there even though all of them had their motions to dismiss granted by the district court. They are, to wit: Patricia M. Ferguson; David H. Maring, Sr., Individually and as Chief Judge of the Family Court, 15th Judicial Circuit of South Carolina; David N. Wilburn, Individually and as Presiding Judge of the Family Court of the 15th Judicial Circuit of South Carolina; Richard W. Riley, Individually and as Governor of

the State of South Carolina and Elizabeth J. Claypool. None of these have appealed nor participated in the proceedings in the appellate court and as petitioners do not and will not appeal from the district court's order granting their motions to dismiss none of this group have an interest herein and, accordingly, none of this group have been named as parties herein.

Lastly, while the complaint and the amended complaint named William D. Leeke, Individually and as Commissioner, South Carolina Department of Corrections, thereafter Leeke was succeeded in office by Parker Evatt, and it was stipulated in a pre-trial conference in the district court (see docket entry of August 31, 1989) that Evatt be substituted for Leeke in his official capacity and the caption hereto so reflects.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

OLIVER H. CLAYPOOL, JR., AND OLIVER H. CLAYPOOL, JR. as next friend of OLIVER J. CLAYPOOL, CHRISTINE O. CLAYPOOL, AND ROBERT L. CLAYPOOL, Petitioners,

v.

FLORA B. BOYD, Individually and as Warden Stevenson Correctional Institution; WILLIAM D. LEEKE; PARKER EVATT, as Commissioner, South Carolina Department of Corrections, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioners respectfully pray that a writ of certiorari issue to review the judgement and opinion of the United States Court of Appeals for the Fourth

Circuit, entered in the above entitled case on September 24, 1990.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fourth Circuit is not reported and is reprinted in the appendix hereto, p. 1a, infra.

The order of the United States District Court for the District of South Carolina (Perry, D.J.) has not been reported. It is reprinted in the appendix hereto, p. 9a, infra.

The order of the Court of Appeals for the Fourth Circuit denying petitioners' petition for rehearing and suggestion for rehearing in banc is unreported as of yet and is set forth in the appendix hereto, p. 11a, infra.

JURISDICTION

The judgement of the United States Court of Appeals for the Fourth Circuit

was entered on September 24, 1990. A petition for rehearing and suggestion for rehearing in banc was denied on October 23, 1990.

The jurisdiction of this Court to review the judgement of the Fourth Circuit Court of Appeals is invoked pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION

AND STATUTES INVOLVED

Thirteenth Amendment, United States Constitution, in relevant part:

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to its jurisdiction.

Sections 20-7-1350, 24-13-210 and 24-13-230, South Carolina Code of Law, are set out in the appendix hereto.

STATEMENT OF THE CASE

This is an action for damages and declaratory relief for an alleged past and expected future violation of rights guaranteed by the Thirteenth Amendment of the United States Constitution.

Petitioner, Oliver H. Claypool, Jr., alleges that after a South Carolina family court ordered him imprisoned for civil contempt, respondents, Flora B. Boyd, individually and as Warden of the Stevenson Correctional Institution and William D. Leeke, individually and as Commissioner of the South Carolina Department of Corrections, wrongfully caused him to be kept in a condition of involuntary servitude or slavery in violation of the Thirteenth Amendment of the United States Constitution.

Family courts in South Carolina are courts of limited jurisdiction dealing

with matters of domestic relations, including divorce, custody of children and support of children. For the purpose of enforcing a lawful order of the family court, contempt proceedings may be brought and the South Carolina legislature has authorized the family court (Section 20-7-1350, South Carolina Code of Laws) to imprison for contempt for up to one year or fine up to $1,500 or both. Since South Carolina family courts do not allow for trial by jury but hear all proceedings without a jury (Rule 24 of the Rules of Practice for the Family Courts of the State of South Carolina) it is known that all such proceedings can only be civil in nature and can not be criminal proceedings. The South Carolina Attorney General has set forth in a published opinion that "Importantly, section 20-7-1350 does not

make a violation of a Family Court order a statutory crime." 1983 Opinions of the Attorney General (S.C.) Opinion 83-93 p.156, at 159 (Dec. 7, 1983).

On February 27, 1986, a South Carolina family court found petitioner, Oliver H. Claypool, Jr., in contempt of court for failure to pay child support as ordered for the benefit of the children petitioners herein. The family court found that it had authority to imprison for up to one year or fine up to $1,500, or both, and ordered Claypool imprisoned for 150 days, provided, however, he could purge himself of contempt and be released from imprisonment by paying the child support as ordered, paying a $1,500 fine to the clerk of court, and posting a $2,500 cash bond to assure timely future payments.

Claypool was imprisoned the day of the

family court's order and he remained imprisoned for each and every one of the next 150 days. Had Claypool been convicted of criminal contempt and been sentenced to 150 days in prison he would have been released far sooner, for in that event, he would have been given credit towards time served for good behavior (pursuant to section 24-13-210, South Carolina Code of Laws) but as a prisoner not convicted of any crime he was not allowed such credit.

Had Claypool been convicted of a crime he would have also been released earlier as a result of receiving credit towards time served for completion of the work assignments that he was forced to complete. These work assignments, in the prison kitchens, prison laundry and in a prison warehouse, were the same work assignments that prisoners

convicted of crime and sentenced to "hard labor" were required to complete thereby earning credit towards time served on their sentences, (pursuant to section 24-13-230, South Carolina Code of Laws) but such credits were not allowed Claypool, again, the reason being, that it was known that Claypool had not been convicted of any crime.

While still in prison, Claypool brought this action, not seeking his release thereby, but, among other things, (the other issues are no longer a part of this action) challenging the conditions of his confinement, alleging, in part pertinent hereto, that Boyd and Leeke were causing him to be held in a condition of unlawful involuntary servitude and unlawful slavery contrary to the Thirteenth Amendment of the Constitution of the United States. The

amended complaint also alleged that Boyd and Leeke had the power to stop such deprivation of rights and did not and have not acted to prevent the wrong being done to Claypool.

And, while in this action the correctness or incorrectness of the family court's order is immaterial (even if Claypool was properly found in civil contempt he was still never convicted of any crime and therefore he was still entitled to the protection of the Thirteenth Amendment) for the purpose of showing that this action is in no way an appeal from the family court's order, it is noted that an appeal was taken from the family court's order with the result that on April 6, 1987, the South Carolina Supreme Court reversed the contempt finding on the merits.

It may also be noted at this point,

that while imprisoned Claypool performed many chores of a normal housekeeping kind that were personally related, such as making his bed each morning, cleaning, sweeping, and mopping the area in which he was confined and this action was not brought to seek damages or other relief based upon such labor.

This action was brought for the reason that respondents Boyd and Leeke caused Claypool to be forced to labor over his objections and against his will to complete the same work assignments that constituted "hard labor" for the prisoners convicted of crime and sentenced to "hard labor".

Petitioners brought this action in the United States District Court for the District of South Carolina invoking federal jurisdiction, as pertinent hereto, under 42 U.S.C. 1983, 42 U.S.C.

1985, the Thirteenth Amendment to the Constitution of the United States, 28 U.S.C 1331, 28 U.S.C. 1343, 28 U.S.C. 2201 and 28 U.S.C. 2202.

The summons, complaint and amended complaint were served upon respondents Boyd and Leeke in both their individual and official capacities. This provided them with written notice of the constitutional violations of which Claypool complained and yet the constitutional violations continued.

Damages are sought against both Boyd and Leeke only in their individual capacities and not in their official capacities. As it is alleged that the same constitutional violations are likely to occur again, declaratory relief is also sought, and such prospective relief, is sought against respondents in both their individual and

official capacities with the caveat that since Leeke has been succeeded in office by Parker Evatt, as Commissioner of the South Carolina Department of Corrections, pursuant to a stipulation entered into at a pre-trial conference of August 31, 1989, and as shown by the docket entry of such date, Evatt is substituted for Leeke in his official capacity, with Leeke remaining a party only in his personal capacity.

Discovery was ordered and completed and both sides then moved for summary judgement. After consideration of the matter the district court concluded that genuine issues of material fact were in dispute and denied both motions.

Respondents appealed the denial of their claim of qualified immunity to the United States Court of Appeals for the Fourth Circuit.

On September 24, 1990, the Fourth Circuit entered its decision reversing the District Court. The Fourth Circuit found that while there is case law supporting Claypool's position that the Thirteenth Amendment clearly establishes that he should not be forced to work while imprisoned for civil contempt, such case law is antiquated and from another jurisdiction. The Fourth Circuit concluded that regardless of whether the law is clearly established in some other part of the country, in South Carolina there is no clearly established United States Constitutional right that prohibits persons unconvicted of any crime but imprisoned for civil contempt from being held in a condition of involuntary servitude or slavery.

The court also held that since Claypool was not presently in prison

injunctive and declaratory relief were not appropriate. A petition for rehearing and suggestion for rehearing in banc was filed on October 3, 1990, and denied on October 23, 1990.

REASONS FOR GRANTING THE WRIT

I.

The Fourth Circuit's decision on an important federal constitutional question is in conflict with the decisions of the highest courts of several states.

The Fourth Circuit's holding that persons unconvicted of any crime but imprisoned for civil contempt do not have a clearly established federal constitutional right not to be held in a condition of involuntary servitude or slavery is in conflict with the decisions of the state court of last resort in at least the states of Iowa,

Minnesota, Virginia, South Carolina and California.

It is in direct conflict with Flannagan v. Jepson, 177 Iowa 393, 158 N.W. 641 (1916), a case exactly on point. In Flannagan, Iowa's highest court held that while a person could be imprisoned for civil contempt it was well settled that he could not be imprisoned at enforced labor without violation of the Thirteenth Amendment of the United States Constitution.

The Fourth Circuit's decision is also in conflict with the Supreme Court of Minnesota's decision in State v. West, 42 Minn. 147, 43 N.W. 845 (1889), where the court found: "There is nothing better settled than that enforced labor is 'involuntary servitude' within the meaning of such constitutional provisions...." 43 N.W. at 847.

The Fourth Circuit's decision is also in conflict with the decision of Virginia's highest court, Wright v. Mathews, 209 Va. 246, 163 S.E.2d 158 (1968) holding that confinement at labor is involuntary servitude proscribed by the Thirteenth Amendment unless the person has been confined as a punishment for crime.

The Fourth Circuit's decision is also in conflict with the clearly established law of the highest court of South Carolina. In Shaw v. Fisher, 113 S.C. 287, 102 S.E. 325 (1920), the Supreme Court of South Carolina held that: "The Thirteenth Amendment prohibits involuntary servitude, except as a punishment for crime." 102 S.E. at 326. And "The prohibition is as effective against indirect as it is against direct actions and laws - statutes or decisions

- which, in operation and effect, produce the conditions prohibited." 102 S.E. at 327.

The Fourth Circuit's decision is also in conflict with the clearly established law of the highest court of California found in Ex Parte Todd, 119 Cal. 57, 50 P. 1071 (1897). Indeed, in Todd, the California Supreme Court in holding that a court has no power to compel employment in order to earn money to pay alimony (the identical issue as herein, imprisonment not being a material fact) based its decision upon a constitutional right so clearly established that there was no need to even cite it. The court simply assumed that everyone understood the Thirteenth Amendment to so provide. (That courts following Todd have no doubt, that although never cited, it was the Thirteenth Amendment (and its state

constitution counterpart) that the court in Todd relied upon for its authority see, eg. In re Jennings, 133 Cal.App.3d 373, at 383, 184 Cal.Rptr. 53, at 59 (Ct. App. 5th 1982)).

II.

The Fourth Circuit's decision is in conflict with the decisions of at least four other Circuits. It is also in conflict with its own prior decision.

The Fourth Circuit's decision, that the scarcity and antiquity of case law upholding Thirteenth Amendment rights means that such constitutional rights are not clearly established, is in conflict with the Fifth Circuit's decision in Wendt v. Lynaugh, 841 F.2d 619 (5th Cir. 1988). In Wendt, the Fifth Circuit found that rights under the Thirteenth Amendment are clearly established by the words of the

Amendment itself. The Fifth Circuit stated: "Evaluation of such a case must begin and perhaps should end with consideration of the provisions of the Thirteenth Amendment to the United States Constitution itself. It should be expected that the reading of the words of the Amendment would be all that could be necessary to treat as frivolous such a claim." 841 F.2d at 620. The Fifth Circuit found that there was an "... unwavering line of authority which applies the Thirteenth Amendment precisely as it is written...." 841 F.2d at 621.

The Fourth Circuit's decision is also in conflict with the Second Circuit's decision in Jobson v. Henne, 355 F.2d 129 (2nd Cir 1966), holding that defendants, state officials, were not entitled to immunity against a claim

made by a civilly committed mentally retarded inmate that they had caused him to have been held in involuntary servitude, peonage or slavery.

The Fourth Circuit's decision is also in conflict with decisions of the Eighth and Ninth Circuit Court of Appeals. Although, the Fourth Circuit claimed support from Ray v. Mabry, 556 F.2d 881 (8th Cir. 1977); and quoted from it that "compelling prison inmates to work does not contravene the Thirteenth Amendment." Ray, 556 F.2d at 882; any reading of Ray, and the case it cited for its authority, Draper v. Rhay, 315 F.2d 193 (9th Cir. 1963); cert. denied 375 U.S. 915 (1963), reh den 375 U.S. 982 (1963) readily reveals that the Fourth Circuit took its quotation completely out of context and that its decision is in conflict with both Ray and Draper as is next shown.

The Ninth Circuit when it spoke in Draper of requiring prisoners to work, clearly distinguished that it was referring to prisoners "imprisoned after conviction" Draper, 315 F.2d at 197. And when the Eighth Circuit referred to prisoners it referred to them only in the same sense as had the Ninth Circuit, ie., prisoners convicted of crime. The inescapable conclusion of reading both the Eighth and Ninth Circuit cases, is that both courts recognized that the constitutional right of nonconvicted persons not to be held in involuntary servitude was so clearly established that there was no necessity to elaborate upon it and that the only reason for not being within its protection was, as were the facts before them, that the prisoners had been duly convicted of a crime.

The Fourth Circuit's decision in the instant case in also in conflict with its own earlier decision in United States v. Booker, 655 F.2d 562 (4th Cir. 1981); where it stated: "The amendment and the legislation were intended to eradicate not merely the formal system of slavery that had existed in the southern states prior to the Civil War, but all forms of compulsory, involuntary service." (citations omitted) 655 F.2d at 564.

III.

The Fourth Circuit's decision on this important federal question is in conflict with the applicable decisions of this Court.

The Fourth Circuit's decision that the Thirteenth Amendment is not clearly established law is in conflict with the decision of this Court in the

Slaughter-House Cases, 83 U.S. (16 Wall.) 36, at 69 (1873); where this Court speaking of the Thirteenth Amendment said: "Its two short sections seem hardly to admit of construction, so vigorous is their expression and so appropriate to the purposes we have indicated."

The Fourth Circuit's holding, that although plaintiffs cited a case exactly on point, because the case was from another jurisdiction, defendants are entitled to qualified immunity, is in conflict with the law of Anderson v. Creighton, 483 U.S. 635, at 640 (1987) that defendants are not entitled to insist that they should have immunity unless the exact or the very same action in question has been previously held unlawful.

The Fourth Circuit's failure to ever

determine what is the applicable law is in conflict with this Court's holding in Harlow v. Fitzgerald, 457 U.S. 800, at 818, (1982); that such a determination is an appropriate step of the process of determining whether or or not that law was clearly established.

The Fourth Circuit's allowance of qualified immunity in the instant case wherein at this summary judgement stage reasonable inferences from the evidence reveal that respondents knew that their action was unconstitutional is in conflict with this Court's holding that defendants who knowingly break the law are not entitled to qualified immunity, Harlow v. Fitzgerald, 457 U.S. 800, at 821, (separate concurring opinion of J. Brennan with whom J. Marshall and J. Blackmun join, 1982);

Since the Fourth Circuit's decision

provides license to imprison at hard labor a person found in contempt by a court that does not allow a jury and the legislative authorization of imprisonment for contempt is up to a year of imprisonment, its decision allows civil contempts to be punished more severely than criminal contempts without affording any of the protections the decisions of this Court have found to be constitutionally required. Accordingly, the Fourth Circuit's decision is also in conflict with this Court's decisions in Bloom v. Illinois, 391 U.S. 194 (1968); and Duncan v. Louisiana, 391 U.S. 145, reh den 392 U.S. 947 (1968).

The Fourth Circuit's decision is also in conflict with this Court's decisions in all of the following well settled cases: Ex Parte Wilson, 114 U.S. 417

(1885); Wong Wing v. United States, 163 U.S. 228 (1896); Clyatt v. United States, 197 U.S. 207 (1905); Bailey v. Alabama, 219 U.S. 219 (1911); and Taylor v. Georgia, 315 U.S. 25 (1942).

The Fourth Circuit's denial of declaratory relief is in conflict with this Court's decisions in Southern Pac. Terminal Co. v. ICC, 219 U.S. 498 (1911); Steffel v. Thompson, 415 U.S. 452 (1974); and Super Tire Engineering Co. v. McCorkle, 416 U.S. 115 (1974).

CONCLUSION

For all of the above stated reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

Oliver H. Claypool, Jr.
2900 S. Memorial #304
New Castle, IN 47362
(317) 529-8827

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 90-1437

OLIVER H. CLAYPOOL, JR., as next friend for Oliver J. Claypool, Christine O. Claypool, and Robert L. Claypool, ((should also read) and Oliver H. Claypool, Jr.),

Plaintiff(s) - Appellee(s),

versus

FLORA B. BOYD, Individually and as Warden, Stevenson Correctional Institution; WILLIAM D. LEEKE, Individually and as Commissioner, South Carolina Department of Corrections,

Defendants - Appellants,

and

PATRICIA M. FERGUSON; DAVID H. MARING, SR., Individually and as Chief Judge of the Family Court, 15th Judicial Circuit of South Carolina; DAVID N. WILBURN,

Individually and as Presiding Judge of the Family Court, 15th Judicial Circuit of South Carolina; Richard W. Riley, Individually and as Governor of the State of South Carolina; ELIZABETH J. CLAYPOOL, Defendants,

Date of entry: September 24, 1990.

Before HALL, PHILLIPS, and WILKINSON, Circuit Judges,

PER CURIAM:

Oliver Claypool filed a 42 U.S.C. § 1983 complaint naming, among others, Flora B. Boyd, Warden of the Stevenson Correctional Institution, and William D. Leeke, former Commissioner of the South Carolina Department of Corrections, as defendants. Boyd and Leeke appeal the district court's order denying their claim of qualified immunity. They are being sued in their individual and official capacities.

This dispute began as a child custody battle in Michigan between Oliver Claypool and his ex-wife. The Claypools were awarded joint custody of their three children. Mr. Claypool, who has stated that he believed that his ex-wife was neglecting and abusing the children, took them to South Carolina without court consent. The mother then obtained a court order in Michigan granting her sole custody. When Claypoool and the children were finally discovered in South Carolina, the court ordered that custody was with the mother and ordered Claypool to resume paying child support. When he did not pay, Claypool was arrested. After a hearing, Claypool was found to be in contempt and he was sentenced to 150 days imprisonment. He could purge himself of contempt, however, by paying the child

support he owed, a $1,500 fine to the county clerk, and posting a $2,500 cash bond with the county to assure that future payments would be made on time. The contempt finding was later reversed by the South Carolina Supreme Court.

Claypool claims that while in prison he was forced to work in violation of the thirteenth amendment. He was required to work, at various times, in the kitchen, the laundry, and the book depository. Claypool claims that he was imprisoned for civil contempt and therefore could not be forced to work at prison jobs.

The district court concluded that genuine issues of material fact were still in dispute between Claypool and Boyd and Leeke so that summary judgement was not appropriate. The defendants claim qualified immunity to suit, which

is an entitlement not to stand trial under certain circumstances. Because of policies underlying qualified immunity, the district court's denial of summary judgement is an immediately appealable order. See Mitchell v. Forsyth, 472 U.S. 511 (1985) (district court's denial of qualified immunity claim is appealable order notwithstanding the absence of a final judgement).

Leeke and Boyd are entitled to qualified immunity to damage suits if they can show that their conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known. See Anderson v. Creighton, 483 U.S. 635 (1987); see also Harlow v. Fitzgerald, 457 U.S. 800, 818-19 (1982). Assuming that Claypool is correct in stating that he was imprisoned for civil contempt,*

------- *It is unclear whether Claypool

was imprisoned for civil or criminal contempt. If Claypool was imprisoned for a crime then he is not entitled to the protections of the thirteenth amendment. See, Ray v. Mabry, 556 F.2d 881, 882 (8th Cir. 1977) (compelling prisoners to work does not contravene the thirteenth amendment).

Boyd and Leeke can be held liable only if the law was clearly established that persons imprisoned for civil contempt cannot be forced to work.

Claypool alleges that the thirteenth amendment clearly establishes that he should not be forced to work while imprisoned for civil contempt. However, Claypool is able to cite only one case which supports this interpretation. In Flannagan v. Jepson, 177 Iowa 393, 158 N.W. 641 (1916), the

court held that a prisoner can be forced to perform hard labor only if he has been convicted of a crime. Therefore, the plaintiff, who was held in contempt of court for violating an injunction, was unconstitutionally sentenced to hard labor.

This lone, antiquated opinion from another jurisdiction does not clearly establish the law in this area. Moreover, Flannagan is further attentuated by the admonition of the Eighth Circuit that "compelling prison inmates to work does not contravene the Thirteenth Amendment." Ray, 556 F.2d at 882. Therefore, under Harlow, the defendants are entitled to qualified immunity. Additionally, the eleventh amendment bars suits seeking damages against these defendants sued in their official capacities absent waiver by the

state. See Edelman v. Jordan, 415 U.S. 651 (1974). Because Claypool is no longer in prison, injunctive and declaratory relief is not appropriate. See Papasan v. Allain, 478 U.S. 265 (1986) (injunctive or declaratory relief against official only where ongoing violation of federal law exists).

Accordingly, we vacate the order of the district court denying Leeke and Boyd's qualified immunity defense and remand for action consistent with this opinion. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

VACATED AND REMANDED

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

CIVIL ACTION NO, 3:86-1317-OA

OLIVER H. CLAYPOOL, JR., as next friend for OLIVER J. CLAYPOOL, CHRISTINE, O. CLAYPOOL, AND ROBERT L. CLAYPOOL, AND OLIVER H. CLAYPOOL, JR.,

Plaintiffs,

VS.

FLORA B. BOYD, individually and as Warden, STEVENSON CORRECTIONAL INSTITUTION, and WILLIAM D. LEEKE, individually and as Commissioner, South Carolina Department of Corrections,

Defendants.

ORDER

Date of entry: March 1, 1990.

This matter is before the Court on the parties' cross motions for summary judgement. After a thorough

consideration of the parties' briefs, arguments and the applicable law, the Court concludes that genuine issues of material fact are in dispute and, therefore, neither party is entitled to summary judgement as a matter of law. Rule 56, Fed. R. Civ. Proc. Accordingly, Plaintiffs' and Defendants' motions for summary judgement are denied.

IT IS SO ORDERED.

/s/ Matthew J. Perry

United States District Judge

Columbia, South Carolina

February 27, 1990.

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED October 23, 1990

No. 90-1437

OLIVER H. CLAYPOOL, JR., as next friend for Oliver J. Claypool, Christine O. Claypool, and Robert L. Claypool, ((should also read) and Oliver H. Claypool, Jr.),

Plaintiff(s) - Appellee(s),

v.

FLORA B. BOYD, Individually and as Warden, Stevenson Correctional Institution; WILLIAM D. LEEKE, Individually and as Commissioner, South Carolina Department of Corrections,

Defendants - Appellants, and

PATRICIA M. FERGUSON; DAVID H. MARING, SR., Individually and as Chief Judge of the Family Court, 15th Judicial Circuit of South Carolina; DAVID N. WILBURN, Individually and as Presiding Judge of

the Family Court, 15th Judicial Circuit of South Carolina; Richard W. Riley, Individually and as Governor of the State of South Carolina; ELIZABETH J. CLAYPOOL, Defendants,

On Petition for Rehearing with Suggestion for Rehearing In Banc

The appellees' petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,

JOHN M. GREACEN

CLERK

STATUTES AND COURT RULES REFERRED TO

§ 20-7-1350 South Carolina Code of Law,

Any adult who willfully violates, neglects or refuses to obey or perform any lawful order of the court, or who violates any provision of this chapter, may be proceeded against for contempt of court. Any adult found in contempt of court may be punished by a fine or by imprisonment on the public works of the county, or by both fine and imprisonment, in the discretion of the court, but not to exceed imprisonment for one year or a fine of fifteen hundred dollars, or both.

§ 24-13-210 South Carolina Code of Law, in pertinent part:

(a) Each prisoner convicted of an offense against this State and sentenced to the custody of the Department of Corrections including those prisoners

serving time in a local facility pursuant to a designated facilities agreement authorized by § 24-3-30, whose record of conduct shows that he has faithfully observed all the rules of the institution wherein he is confined and has not been subjected to punishment for misbehavior, is entitled to a deduction from the term of his sentence beginning with the day on which the service of his sentence commences to run, computed at the rate of twenty days for each month served....

(b) Each prisoner convicted of an offense against this State and confined in a local correctional facility, or upon the public works of any county in this State, whose record of conduct shows that he has faithfully observed all the rules of the institution wherein he is confined, and has not been subjected to punishment for misbehavior,

is entitled to a deduction from the term of his sentence beginning with the day on which the service of his sentence commences to run, computed at the rate of one day for each two days served....

§ 24-13-230 South Carolina Code of Law, provides in pertinent part:

(a) The Commissioner of the Department of Corrections may allow any prisoner in the Custody of the Department, who is assigned to a productive duty assignment or who is regularly enrolled and actively participating in an academic, technical, or vocational training program, a reduction from the term of his sentence of zero to one day for every two days he is employed or enrolled....

Rule 24, Rules of Practice for the Family Courts of South Carolina:

All hearings shall be by the Court without a jury.

No. 90-771

Supreme Court, U.S.
FILED
DEC 17 1990
JOSEPH F. SPANIOL, JR.
CLERK

In The Supreme Court Of The United States

OCTOBER TERM, 1990

OLIVER H. CLAYPOOL, JR., and OLIVER H. CLAYPOOL, JR. as next friend of OLIVER J. CLAYPOOL, CHRISTINE O. CLAYPOOL, and ROBERT L. CLAYPOOL,

Petitioners,

v.

FLORA B. BOYD, Individually and as Warden, Stevenson Correctional Institution and WILLIAM D. LEEKE, Individually and as Commissioner, South Carolina Department of Corrections,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

OLIVER H. CLAYPOOL, JR., and OLIVER H. CLAYPOOL, JR. as next friend of OLIVER J. CLAYPOOL, CHRISTINE O. CLAYPOOL, and ROBERT L. CLAYPOOL,

Petitioners,

v.

FLORA B. BOYD, Individually and as Warden, Stevenson Correctional Institution and WILLIAM D. LEEKE, Individually and as Commissioner, South Carolina Department of Corrections,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

On February 27, 1986, South Carolina Family Court Judge David Maring adjudged the Petitioner, Oliver H. Claypool, Jr., guilty of contempt of court for failure to pay his child support obligations.[1] The Petitioner was committed to the South Carolina Department of Corrections for a period of 150 days pursuant to S.C. Code Ann. § 20-7-4000 (Law. Co-op. 1976). While incarcerated, the Petitioner performed various work assignments,

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[1] The Petitioner Claypool has also brought suit as the next friend of his children, Oliver J. Claypool, Christine O. Claypool, and Robert L. Claypool; however, the Respondents contend that the children are not proper parties to this action since they do not have a claim under the Thirteenth Amendment. Thus, throughout this brief, the Petitioners will be referred to in the singular, that being, the person of Oliver H. Claypool, Jr.

including work in the kitchen, the laundry, and the book depository. It is undisputed that the work that the Petitioner performed was not onerous, strenuous, or physically demanding.

Judge Maring's Order committed the Petitioner to the South Carolina Department of Corrections for a period of 150 days. The Petitioner, however, was given the opportunity to purge himself of the contempt (i) by paying the arrearages in child support, (ii) by posting a $2500 cash bond, and (iii) by paying a $1500 fine to the Clerk of Court for Horry County.

While in prison, the Petitioner filed this lawsuit pursuant to 42 U.S.C. 1983, alleging numerous causes of action including a claim that his Thirteenth Amendment rights were violated in that he

was required to work while in prison on what he claims to be a civil contempt charge. In deciding a Motion to Dismiss filed by all defendants, the Honorable Matthew J. Perry dismissed all causes of action with the exception of the Thirteenth Amendment claim. Thereafter, the remaining defendants, Flora B. Boyd and William D. Leeke, filed a motion for summary judgment. The Petitioner also filed a motion for summary judgment. Judge Perry, however, denied the cross motions for summary judgment. The Respondents, Flora B. Boyd and William D. Leeke, appealed Judge Perry's Order to the Fourth Circuit Court of Appeals, pursuant to the collateral order doctrine set forth in Mitchell v. Forsyth, 472 U.S. 511 (1985), wherein the United States Supreme Court held that denials of Harlow

qualified immunity raised in a motion for summary judgment are immediately appealable.

The Fourth Circuit Court of Appeals held that the Respondents, Boyd and Leeke, are entitled to Harlow immunity because the law on which the Petitioner relied was not clearly established in 1986. Additionally, the Fourth Circuit ruled that prospective relief was not appropriate because the Petitioner is no longer imprisoned in the South Carolina Department of Corrections. Accordingly, the Fourth Circuit vacated the order of the lower court and remanded for entry of summary judgment in the Respondents' favor.

The Petitioner subsequently filed a petition for rehearing and rehearing en banc, which was denied. Thereafter, the

Petitioner filed a petition for writ of certiorari with the United States Supreme Court. The Respondents oppose the granting of a writ of certiorari in this case.

REASONS FOR DENYING THE WRIT

The Petitioner raises two issues for this Court to consider: (1) whether the Thirteenth Amendment as it applies to persons imprisoned on a contempt charge was "clearly established" law in 1986; and (2) whether the Petitioner was entitled to declaratory relief.

It should be noted that the Fourth Circuit Court of Appeals held that the Respondents in their official capacities, were alter egos of the State of South Carolina and, therefore, were entitled to

Eleventh Amendment immunity. The Petitioner has failed to raise an objection regarding this issue, except as it applies to declaratory relief.

The Respondents maintain that the Fourth Circuit Court of Appeals correctly decided this case and that there is no reason for this Court to issue a writ of certiorari.

A. The Fourth Circuit Court of Appeals correctly held that the Respondents in their individual capacities are entitled to qualified immunity from all liability, pursuant to Harlow v. Fitzgerald.

The Petitioner takes exception with the Fourth Circuit's decision by arguing that the Thirteenth Amendment is "clearly established" law. The Petitioner bases his argument on the language of the amendment and on the wealth of case law

interpreting it. The Petitioner, however, fails to comprehend the Fourth Circuit's holding.

The Fourth Circuit did not rule that there is no case law interpreting the Thirteenth Amendment or that the amendment as it applies to numerous situations is not clearly established law. To the contrary, there is a multitude of cases addressing the Thirteenth Amendment as it applies to prisoners convicted of a crime, to military draftees, etc.[2]

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[2] The Thirteenth Amendment to the United States Constitution provides: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." Thus, if an individual is imprisoned as punishment for a crime, he would clearly not be protected by the Thirteenth Amendment. Draper v. Rhay, 315 F.2d 193 (9th Cir. 1963). See also, Ray v. Mabry, 556 F.2d 881, 882 (8th Cir. 1977) ("Compelling prison inmates to work does not contravene the Thirteenth

Nonetheless, the Thirteenth Amendment's prohibition against involuntary servitude has been raised in situations which do not benefit from previous judicial decisions. For example, in Bobilin v. Board of Education, 403 F. Supp. 1095 (D. Hawaii 1975), a federal district court addressed the unique issue as to whether a mandatory requirement that school children work in the school cafeteria was violative of the Thirteenth Amendment. Likewise, in Jobson v. Henne, 355 F.2d 129 (2d Cir. 1966), the Second Circuit Court of Appeals encountered the unique issue as to whether the protections of the Thirteenth Amendment applied to persons committed to mental institutions. The issues presented in these cases had

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Amendment.")

not been specifically addressed by prior courts; therefore, if Harlow immunity had existed at those times, the defendants could have asserted an immunity defense.

Consequently, the Fourth Circuit did not proclaim that the Thirteenth Amendment is not clearly established law. The court recognized the Respondents merely did not know, due to a lack of precedential guidance, how the Thirteenth Amendment was to be applied to the Petitioner's unique situation.

It was precisely for situations such as this that the United States Supreme Court adopted Harlow qualified immunity. More specifically, in Harlow v. Fitzgerald, 457 U.S. 800 (1982), the Court clearly set forth objective standards when the qualified immunity defense would be utilized and gave specific benchmarks to

the judiciary in determining when to protect public officials from undue interference with the exercise of their official duties. In setting forth its guidelines, the Court stated:

> We therefore hold that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person should have known.
>
> Reliance on the objective reasonableness of an official's conduct, as measured by reference to clearly established law, should avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment.

457 U.S. at 818. (citations omitted). In Anderson v. Creighton, 483 U.S. 635 (1987), the Court further explained that a court considering a summary judgment motion must look for the "'objective legal

reasonableness' of the action assessed in light of the legal rules that were 'clearly established' at the time it was taken." 483 U.S. at 639.

The Respondents in their individual capacities are clearly entitled to Harlow qualified immunity for numerous reasons, some of which were not even cited by the Fourth Circuit Court of Appeals but warrant further discussion in an effort to demonstrate that a writ of certiorari should not be granted in this case.

First, as the Fourth Circuit noted, the Respondents were faced with determining whether to require work from an inmate incarcerated for contempt of court. There is, however, no prior case law addressing whether requiring labor from an inmate incarcerated for contempt is violative of that inmate's Thirteenth

Amendment rights, that is, absent a 1916 state court case from Iowa -- Flannagan v. Jepson, 177 Iowa 393, 158 N.W. 641 (1916). Based thereon, the Fourth Circuit correctly held that the Petitioner's involuntary servitude claim is not based on a clearly established constitutional right. The court further noted that the Respondents, as reasonable persons, cannot be expected to be versed in a 1916 Iowa case law.

Additionally, as the Fourth Circuit acknowledged, the Respondents were faced with interpreting a South Carolina family court order which did not clearly signify whether the contempt charge was civil or criminal in nature. If the Petitioner was imprisoned for criminal contempt, then he has failed to state a Thirteenth Amendment claim because an individual, who is

imprisoned for the punishment of a crime, is not protected by the Thirteenth Amendment. Draper v. Rhay, 315 F.2d 193 (9th Cir. 1963). And, if the Petitioner was imprisoned for civil contempt, then the Respondents are entitled to Harlow immunity because their conduct was objectively reasonable in light of clearly established law. Certainly, the terms of the family court order, if not clearly providing for criminal contempt, are ambiguous at best. Based upon the order that the Respondents were forced to interpret, one cannot say that the order was so clearly civil in nature that the Respondents erred in requesting the Petitioner to work.

Therefore, it is respectfully submitted that the Respondents in their individual capacities are entitled to

qualified immunity from all liability and that the decision of the Fourth Circuit Court of Appeals was correct.

B. The Fourth Circuit Court of Appeals correctly held that the Petitioner is not entitled to declaratory relief.

Citing the case of Papasan v. Allain, 478 U.S. 265 (1986), the Fourth Circuit Court of Appeals held that declaratory and injunctive relief were not appropriate because the Petitioner is no longer imprisoned in the South Carolina Department of Corrections. The court's holding is clearly correct for a number of reasons. First, the Petitioner is no longer incarcerated at the South Carolina Department of Corrections. Second, he is no longer subject to a South Carolina family court order in that the order of Judge David Maring, which serves as the

basis of this lawsuit, was overturned by the South Carolina Supreme Court. And finally, the Petitioner is no longer a resident or citizen of the State of South Carolina and is no longer subject to the jurisdiction of its courts. Therefore, the Petitioner faces no threat whatsoever of reimprisonment under the same conditions by these Respondents.

In his Petition, the Petitioner contends that the Fourth Circuit's decision regarding this issue is in conflict with this Court's previous decisions which have stated that issues "capable of repetition, yet evading review" may be heard. The Petitioner's argument lacks merit for two reasons. First, as discussed above, the Petitioner's case is not capable of repetition. Second, this issue has not

evaded review in that the Fourth Circuit decided the question presented on its merits.

For these reasons, the Fourth Circuit correctly held that the Petitioner failed to state a cause of action for injunctive or declaratory relief.

C. The decision of the Fourth Circuit Court of Appeals does not warrant review by the United States Supreme Court; therefore, a writ of certiorari should not be issued.

1. The decision of the Fourth Circuit Court of Appeals does not conflict with any decision of another United States court of appeals on this same matter.

The decision of the Fourth Circuit Court of Appeals does not conflict with any decision of another United States court of appeals on this same matter. The law governing Harlow qualified immunity is

well settled among the circuits. The application of Harlow immunity in a case with similar facts has not risen previously in any known reported case. In other words, the Respondents cannot cite, nor has the Petitioner cited, any court of appeals case addressing the issue as to whether requiring labor from an inmate incarcerated for contempt (even civil contempt) is violative of that inmate's Thirteenth Amendment rights.

The court of appeals decisions cited by the Petitioner are not in conflict with the decision of the Fourth Circuit. None of those decisions addressed the unique issues presented in this case. Instead, those decisions, with the exception of Jobson v. Henne, 355 F.2d 129 (2d Cir.

1966),[3] addressed the issue of convicted inmates being forced to work, with or without pay, against their will. In short, the decisions cited by the Petitioner reflect that the Thirteenth Amendment is "clearly established" law but that the Thirteenth Amendment as it applies to those imprisoned for civil contempt is not "clearly established" law.

2. The decision of the Fourth Circuit Court of Appeals does not conflict with any decision of a state court addressing the issue of Harlow immunity as it applies to the facts of this case.

The decision of the Fourth Circuit Court of Appeals does not conflict with

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[3] In Jobson v. Henne, 355 F.2d 129 (2d Cir. 1966), the Second Circuit Court of Appeals decided that persons committed to mental institutions are protected by the Thirteenth Amendment.

any decision of a state court addressing the issue of Harlow immunity as it applies to the facts of this case. The Fourth Circuit as well as the Respondents acknowledge that the 1916 Iowa state court case of Flannagan v. Jepson, 177 Iowa 393, 158 N.W. 641 (1916), does provide that the Thirteenth Amendment prohibits an individual imprisoned for civil contempt to be required to work. Nonetheless, the issue before the Fourth Circuit was not whether the Flannagan holding is correct, but rather whether the Flannagan holding was clearly established constitutional law in 1986. Certainly, the Fourth Circuit decided correctly that it was not "clearly established" law, of which the Respondents had a constitutional duty to know and apply. Moreover, the remaining state court cases cited by the Petitioner

involve peonage and other matters with no bearing on the issues raised to this Court.

3. The decision of the Fourth Circuit Court of Appeals does not conflict with any decision of the United States Supreme Court.

The decision of the Fourth Circuit Court of Appeals does not conflict with any decision of the United States Supreme Court. Contrary to the Petitioner's assertion, the Fourth Circuit's decision does not conflict with this Court's implementation of Harlow qualified immunity in Harlow v. Fitzgerald, 457 U.S. 800 (1982), or its elaboration in Anderson v. Creighton, 483 U.S. 635 (1987).

The Petitioner maintains that the Fourth Circuit's decision is in conflict with numerous peonage cases from the late

nineteenth and early twentieth centuries. It is clear, however, that this case does not involve peonage. The Petitioner was imprisoned not for failing to pay a debt or perform a service but rather for failing to comply with a court order. That is not peonage.

The Petitioner also erroneously argues that the Fourth Circuit's decision is in conflict with this Court's decisions in Bloom v. Illinois, 391 U.S. 194 (1968), and Duncan v. Louisiana, 391 U.S. 145 (1968). In doing so, the Petitioner raises the issue that he was not provided with the procedural safeguards normally afforded one convicted of criminal contempt. However, that issue was not before the Fourth Circuit Court of Appeals nor is it before this Court. Even if it were, the Respondents would not be the

proper defendants for such a cause of action.

Finally, the Petitioner argues that the Fourth Circuit's decision permits those individuals imprisoned for civil contempt to be required to work while in prison. The Fourth Circuit held that the contempt order in this case was ambiguous and that the Respondents enjoyed Harlow immunity in their individual capacities and Eleventh Amendment immunity in their official capacities.

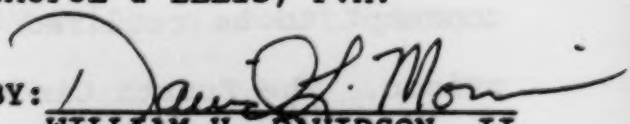
CONCLUSION

Based on the foregoing reasoning and analysis, the Respondents respectfully submit that the Fourth Circuit Court of Appeals correctly decided this case and

that there is no reason for this Court to issue a writ of certiorari.

Respectfully submitted,

NAUFUL & ELLIS, P.A.

BY: 

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